IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 30TH NOVEMBER 2007 / 9TH AGRAHAYANA 1929

Bail Appl..No. 7372 of 2007()

CRIME NO.272/2007 OF MANJESHWAR POLICE STATION

: PETITIONERS/ACCUSED

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1. MAKKI RAFEEQ @ RAFEEQ,
   S/O MOHAMMED MUKKRI,
   PACHILAMPARA HOUSE,
   KASARGODE TALUK.

2. MADHU BASHEER @ BASHEER,
   S/O ABDUL RAHIMAN,
   PATHODY HOUSE, KASARGODE TALUK.

BY ADV. SRI.SOJAN MICHEAL

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 30/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.7372 of 2007

Dated this the 30th day of November 2007

O R D E R

Application for anticipatory bail. The petitioners face allegations in a crime registered for offences punishable under Section 420 I.P.C and Section 21(1)(b) of the N.D.P.S Act. The crux of the allegations against the petitioners is that they attempted to hand over a bottle describing it to be a bottle of pickle to a person who was to travel to his place of employment abroad with the request to hand over the same to a person at such place of employment. The bottle contained concealed in it ganja, contrary to the provisions of the N.D.P.S.Act. In short, the contention is that the accused persons attempted to transport ganja unauthorisedly to the place of employment of the de facto complainant by deceiving the de facto complainant to believe that it was a bottle of pickle. Crime was registered. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the allegations are totally false. Inherently and on broad

probabilities, it is difficult to swallow the version. Going by the version in the complaint, it is alleged that there was an attempt to hand over the bottle on the previous day. It was received; but was returned later. Subsequent attempt was again allegedly made on the next day to hand over the bottle of pickle. This version is extremely improbable, it is alleged.

3. The learned Public Prosecutor submits that the allegations are found to be true and sustainable in the investigation conducted so far. There is absolutely no such improbability or artificiality in the allegation. The miscreants certainly wanted to win the confidence of the person travelling abroad and convince him that it was a bona fide transaction. For that, they had approached him again on the second occasion.

4. I find absolutely nothing inherently improbable in the allegations at this stage to invoke the extraordinary equitable discretion under Section 438 Cr.P.C. I am certainly of the opinion that the petitioners do not deserve to be armed with an order of anticipatory bail at this stage. This, I agree with the learned Public Prosecutor, is a fit case where the petitioners must appear before the investigating officer or the learned

Magistrate having jurisdiction and then seek regular bail in the normal and ordinary course.

5. In the result, this petition is dismissed. Needless to say, if the petitioners surrender before the investigating officer or the learned Magistrate and apply for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007